

- 4) Provides that regardless of (3) above, an HOA must provide all general notices by individual delivery if a member requests it.

This bill:

- 1) Requires HOAs to make a good faith effort to obtain an email address for each of their members by June 1, 2022.
- 2) Requires HOAs, effective January 1, 2023, to deliver by email any document that is required to be delivered by “individual delivery” or “individual notice.”
- 3) Notwithstanding (2) above, requires an HOA to deliver a notice by first-class mail, registered or certified mail, express mail, or overnight delivery, if the member has not provided a valid email address to the HOA, or the member has revoked their consent to receive documents by email.
- 4) Requires HOAs to deliver an additional copy of documents requested by a member, including annual reports and assessment notices, to a secondary email or mailing address.
- 5) Requires HOAs, if two-thirds of its members approve, to deliver a document required to be delivered by “individual delivery” or “individual notice,” by any means specified in (2) or (3) above.
- 6) Requires an HOA member to annually provide their email or mailing address or addresses, as well as an alternate or secondary email or mailing address, to which HOA notices shall be delivered.
- 7) Requires HOAs to annually notify their members that by providing an email address to the HOA, the member agrees that communication shall be by email.
- 8) Requires, if a notice is required to be delivered by “general notice” or “general delivery,” that the HOA also post the document on its website.
- 9) Requires each HOA of 50 or more units to maintain a website, as specified, to provide general information to its membership. An HOA may choose not to create a website if approved by two-thirds of its members.

COMMENTS

- 1) *Author’s statement.* “Under the Davis-Stirling Common Interest Development Act, homeowners associations (HOAs) must provide members with necessary

documents, including annual budgets, policy statements, or notices. Because of existing law, HOAs are, by default, required to print hundreds of pages of documents, resulting in additional costs to deliver a physical copy to each member. In the midst of a global pandemic, where frustrations with mail delays are constantly increasing, and cost savings are crucial to the continued operation of vital services, updating these processes to be electronic is more important than ever. SB 392 will improve accessibility to important documents and reduce delivery costs by requiring HOAs to communicate with homeowners via email, unless otherwise requested by the member, beginning January 1, 2023 if a valid email address has been provided by June 1, 2022. It will also mandate associations consisting of 50 or more units to maintain a website.”

- 2) *Background: CIDs.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-quarter of the state’s housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents.
- 3) *Electronic notice.* Existing law allows an HOA, for a document that is required to be delivered by “individual notice,” to deliver it by email, fax, or other electronic means if the recipient has opted in. This bill would instead provide that, effective January 1, 2023, an HOA must provide these documents by email unless a member has opted out. Some documents, such as annual budgets and annual policy statements, can run to hundreds of pages and can be costly to deliver in hardcopy. The California Association of Realtors (CAR), sponsor of this bill, notes that electronic document delivery is more cost-effective and reduces negative environmental impacts; in addition, homeowners are more likely to retain important documents electronically for future reference.
- 4) *Opposition concerns.* Opponents state several concerns:
 - a) *Privacy concerns.* This bill requires HOA members to opt out of email delivery, while under existing law an HOA can only deliver notices by email if a member has opted in. Opponents state that this bill takes away the right

of a homeowner to consent to give their email address to a business and transfers that right to the membership of an HOA, by allowing the HOA membership as a whole to decide by vote whether all communication between the HOA and its members should be by email. Opponents further state that this bill fails to place guardrails on the uses to which an HOA will put an owner's email address once it obtains possession of it, e.g., an HOA could theoretically provide the email address to a debt collector. CAR states that this bill does nothing to alter or amend the law with respect to consumer privacy, does not require HOA members to provide their email address to the HOA, and allows members to at any time revoke consent to use their email address.

- b) *Notice requirements.* Existing law requires HOAs to deliver some notices to its members by "individual delivery" (e.g., directly to each member), while others may be delivered by "general delivery" (e.g., through a newsletter or website). Opponents state that this bill ignores these statutes. CAR states that this bill maintains existing law requirements regarding legal notices.
- c) *Website requirement.* This bill requires every HOA of at least 50 members to create a website. Opponents state that this requirement will be difficult or even impossible to comply with for HOAs in rural areas where Internet access is unreliable. Further, opponents state that this bill provides no funding, meaning that any costs to create and maintain a website would have to come out of dues paid by HOA members. CAR notes that HOA activities have always been funded by HOA members, not the state, and that switching even some members to email will result in significant savings to HOAs in terms of reduced postage and printing costs.

5) *Double referral.* This bill has also been referred to the Committee on Judiciary.

RELATED LEGISLATION:

SB 261 (Roth, Chapter 836, Statutes of 2018) — authorized an HOA to provide a document by electronic means if the recipient has consented by email, and reduces the notice requirement of a proposed rule change by the HOA board from 30 days to 28 days.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

**POSITIONS: (Communicated to the committee before noon on Friday,
April 9, 2021.)**

SUPPORT:

California Association of Realtors (Sponsor)

OPPOSITION:

California Alliance for Retired Americans
Center for California Homeowner Association Law

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